No. 80532-6

SUPREME COURT OF THE STATE OF WASHINGTON

RENTAL HOUSING ASSOCIATION OF PUGET SOUND,

Appellant,

v.

CITY OF DES MOINES,

Respondent.

REPLY BRIEF OF APPELLANT

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I. INTRODUCTION

Ever since the Respondent City of Des Moines denied public access to hundreds of pages of unidentified records in August 2005, its message has been: the City decides what is good for the people to know, and what is not good for them to know." Instead of explaining its concealment of records in the particularized manner required, the City asserted that entire categories of records fell under either one exemption or another and refused for eight months to shed any more light on what was being concealed and why.

Now the City defends its behavior by arguing that the Public Records Act, Chap. 42.56 RCW ("PRA"), is a scheme to protect governments from the scrutiny of citizens and courts, rather than a strongly worded mandate to disclose public records. Under the City's reading of the PRA, each agency decides for itself what constitutes a "claim of exemption" for purposes of commencing the statute of limitations. The City would cut off the right to judicial review at the earliest possible time, even when an agency strings along a citizen with false promises and pleas for delay, as in this case. The City would force citizens to sue just to find out what records are being withheld and why, contrary to legislative intent.

The City asks this court to interpret the PRA in favor of fog instead of sunshine, deference instead of scrutiny, and autonomy instead of accountability. This is antithetical to the letter and spirit of the PRA. The PRA is to be liberally construed to protect the public interest in disclosure because "the people, in delegating authority, *do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.*" RCW 42.56.030 (italics added).

Appellant Rental Housing Association of Puget Sound (RHA) met the requirement to file suit "within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis." RCW 42.56.550(6). The City did not make a claim of exemption regarding each withheld record until April 2006, eight months after RHA first requested access to the withheld records. Because RHA filed this action less than a year later, on January 17, 2007, the action was timely. Other reasons why the suit was timely, and why this court should reverse dismissal, include: 1) the City released records to RHA on a partial or installment basis in August 2005, March 2006 and February 2007, causing the statute of limitations period to start anew with each installment; 2) the City's initial, *partial* statements of exemption were supplanted by the final, detailed claim for statute of limitations purposes; and 3) the entire

process started over when RHA resubmitted its original records request on January 25, 2006, obligating the City to release the records or make a new claim of exemption in response.

To justify its escape from scrutiny, the City resorts to misrepresentation and strained policy arguments. Because this action was timely filed according to any reasonable interpretation of the PRA statute of limitations, this court should reverse dismissal so that the City finally can be held accountable.

II. DISCUSSION

A. The City Mischaracterizes Appellant's Arguments.

1. RHA seeks to enforce, not modify, the PRA.

It is the City, not RHA, who is urging this court to modify the statute's plain terms. The City argues that the statute of limitations begins to run when an agency "asserts a right" to withhold records or simply denies access to records. Brief of Resp. at pp. 10, 17, 31. But that is not what RCW 42.56.550(6) says. Merely asserting a right, or denying a request, is empty of content, whereas RCW 42.56.550(6) starts the clock with a "claim of exemption" or a final release of records.

By contrast, RHA relies on the express terms of the PRA in arguing that the statute of limitations begins to run when an agency makes a claim of exemption in the manner required by RCW 42.56.210(3).

> Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of ***how the exemption applies to the record withheld.***

RCW 42.56.210(3) (bold italics added). This court has interpreted this language to mean that when an agency denies records, it must: 1) identify "with particularity" which records or parts of records are being withheld; 2) explain which specific exemption applies to each record; and 3) briefly explain why the exemption applies. Progressive Animal Welfare Society v. Univ. of Washington, 125 Wn.2d 243, 270-71, 884 P.2d 292 (1995) ("PAWS"). Thus, it is unnecessary to add terms to the PRA. The language used by the Legislature and interpreted in PAWS says exactly what a "claim of exemption" is: a "statement of the specific exemption" that is invoked, and a "brief explanation" of how it applies to each document ("the record withheld"). RCW 42.56.210(3).

The City did not make a claim of exemption under RCW 42.56.210(3) until at least April 14, 2006, the first time that it identified

each of the records it had been withholding from RHA. Therefore, without adding terms – but construing the PRA as a whole to give effect to all of its parts - RHA had at least until April 2007 to file a suit alleging that the City unlawfully withheld public records. The January 2007 suit therefore was timely based on the plain terms of the PRA.

2. The definition of "claim of exemption" must come from the Legislature and courts, *not* from the parties involved in records disputes.

The City repeatedly attributes to RHA the erroneous view that whether a "claim of exemption" has been made is to be determined subjectively by the parties involved. Brief of Resp. at pp. 16-17, 20, 22, 23. More specifically, the City falsely accuses RHA of advocating for a rule that the statute of limitations starts to run only when a records requester is satisfied with the quality of an agency's claim of exemption. Id. This is a distortion of RHA's argument.

RHA argues that the statute provides a "clear line" for determining when a claim of exemption is made. Brief of Appellant at p. 26. The statute sets forth a simple three-part test: 1) Did the agency state a specific exemption? 2) Did the agency identify each withheld record? 3) Did the agency explain how an exemption applies to each record? Id., RCW

42.56.210(3). If all three questions are answered "yes," a claim of exemption is made. Id.

Contrary to the City's assertion, it is RCW 42.56.210(3), not the requester's stamp of approval, which establishes whether a claim of exemption is made. RCW 42.56.210(3) does not speak to the quality or legal correctness of an agency's explanation. Rather, it requires that the explanation be particularized – it must convey the agency's view as to why a specific exemption applies to a specific record.[1] The required information either is conveyed or it isn't. Thus, a clear line is drawn for citizens who need to know when the one-year limitation period begins. RHA has never argued for citizens to draw their own subjective line.

It is the City – not RHA – that seeks to inject subjectivity into determining the deadline for filing suit. As the City interprets the PRA, each agency decides for itself what a "claim of exemption" consists of, without regard to the clear line afforded by RCW 42.56.210(3). See, e.g., Brief of Resp. at p. 18 (the statute of limitations commences on "the date it is asserted" by an agency). Under this view, it is the *agency* that controls when the one-year limitation period begins, and it is tough luck if a citizen

[1] As the City points out, agencies are not required to state the *correct* exemption at the time of denying access to records, but can claim a different exemption later upon judicial review. This does not alter the requirement for a claim of exemption to be particularized.

reads the statute differently than the agency does – as in this case, where RHA understood from the plain language of the PRA that a claim of exemption must be a particularized explanation addressing each record. The City's self-serving interpretation encourages the sort of inequitable behavior that occurred here, where the City kept urging RHA to wait for more responses, only to argue later that the first, inadequate response was the only one that mattered.

The City warns of "chaos" and uncertainty if this court harmonizes the statute of limitations in RCW 42.56.550(6) with the requirement in RCW 42.56.210(3) to provide a particularized explanation whenever records are claimed to be exempt. Brief of Resp. at pp. 16-17. This is backwards. By giving effect to RCW 42.56.210(3), which says exactly how a claim of exemption must be made, this court would restore coherence to the PRA scheme and prevent the kind of chaos that characterized this case.[2] Citizens would not be punished for delaying litigation while waiting for an adequate explanation that might make a suit unnecessary. The one-year limitation period would not start until citizens

[2] Curiously, the City relies on Ockerman v. King County Dept. of Development and Environmental Services, 102 Wn. App. 212, 6 P.3d 1214 (2000), for the proposition that the term "claim of exemption" in RCW 42.56.550(6) has a meaning independent of RCW 42.56.210(3). Brief of Respondent at pp. 9, 13. Actually Ockerman supports the opposite conclusion, saying that "statutes are construed as a whole, to give effect to all language and to harmonize all provisions." 102 Wn. App. at 216. And even though the court in that case found that the PRA language at issue was not ambiguous, the court still found it necessary to read "two provisions together" and harmonize them. Id. at 217.

have complete information with which to judge the lawfulness of the agency's actions, as the Legislature intended.

In sum, the City mischaracterizes RHA's position. The question of when an agency makes a claim of exemption for statute of limitation purposes is for the courts to determine, based on legislative intent. Because the PRA evinces legislative intent to fully inform citizens about withheld records before imposing a one-year limitation period, and because RHA filed suit within a year of receiving the required information, dismissal of this action should be reversed.

3. RHA does not insist on a particular form.

RHA does not believe that the specific information required by RCW 42.56.210(3) must be in the form of a "log" to constitute a claim of exemption. Brief of Resp. at pp. 20, 22.[3] Thus, the City's lengthy rebuttal of this premise is off point, and is all the more puzzling because the City does not say why a log listing each withheld record is not the best way to comply. Id. at pp. 25-26. The point is that the City did not comply *in any way* with RCW 42.56.210(3) until at least April 14, 2006. Therefore the one-year statute of limitations did not bar RHA's January 2007 action.

[3] RHA did point out that the *trial court* said RCW 42.56.210(3) requires a privilege log. Brief of Appellant at p. 26.

B. The Clock Started Over When the Records Request Was Resubmitted.

1. RHA clearly renewed its demand for records.

The City protests that, when it received RHA's letter on January 25, 2006, demanding access to the same records originally requested on July 20, 2005, it was somehow not clear that RHA was resubmitting the original records request. Brief of Respondent at p. 27. The City suggests that RHA had to use the word "re-submittal" in order for its renewed demand to have any effect. Id. There is no authority for this proposition.

In fact, the City acknowledges that "there is no official format" for a records request, and that the only requirements are to invoke the PRA and to "identify the documents with reasonable clarity to allow the agency to locate them." Brief of Respondent at pp. 28-29 (citing Hangartner v. City of Seattle, 151 Wn.2d 439, 447 (2005)). The January 25, 2006 request met those requirements. As a result, the trial court's conclusion that the statute of limitations commenced in August 2005 could not be correct, because that was five months *before* RHA resubmitted its request and started the process over.

The January 25, 2006 letter, written by RHA's former attorney, Michael Witek, to the former City Attorney, bore the following heading:

> Re: *Demand for Immediate Production of Documents Requested July 20* and October 7, 2005; And Separate PDA Request for More Recent Documents Regarding the Crime-Free Rental Housing Ordinance/Program and the City's 2006 Budget

CP 2148 (italics added). The first two pages of the letter were devoted to the demand for the "documents requested July 20," as follows:

> We are writing to demand that the City immediately produce long overdue public records, along with documentation justifying the withholding of any records. A brief review of the history of our requests readily demonstrates that the City has failed to meet its obligations under the Public Disclosure Act, RCW 42.17.250, et. seq. [recodified as Chap. 42.56 RCW].
>
> We made our initial request for documents pertaining to the City's Crime-Free Rental Housing Ordinance and Program on July 20, 2005....On October 7, 2005, we requested that the City either produce the withheld documents (especially several types of documents which appeared to fall far outside the PDA's exemptions), or identify each document and the specific basis for withholding it, as required by the PDA....
>
> It is now January 25, 2006 – more than two months past the City's original estimation of November 18, and nearly five months from when the documents should have been produced in the first instance. Unless we receive immediate assurance from the City that the responsive documents will be

> promptly produced, we will file suit under the PDA to compel production of the documents....*To avoid such dispute, the City must promptly and fully respond to our PDA requests*...

CP 2148-2149 (italics added). Thus, RHA clearly invoked the public records law, and left no doubt as to what records it was requesting – the same ones originally requested on July 20, 2005 (and again on October 7, 2005.) Therefore, according to the City's own arguments, the requirements for a records request were met.

Although the January 25, 2006 letter included a detailed demand that the City finally produce the records requested five months earlier, the City argues that only the last part of the letter – under the subheading **"New PDA Request for More Recent Documents"** – was recognizable as a records request. Brief of Respondent at p. 28 (emphasis in original). The City notes that "it was in bold print," as if a citizen's type font must scream for attention in order to get a response. Id. This is absurd. It was clear what RHA was asking. The term "Demand for...Documents...And Separate PDA Request" made clear that the January 25, 2006 letter included two records requests. CP 2148.

Moreover, the City forgets that the *burden is on agencies* to either disclose requested records or justify nondisclosure. RCW 42.56.550(1)

and .070(1). If the City truly doubted whether RHA was resubmitting its July 20, 2005 records request, it had the responsibility to seek clarification. See "Model Rules" WAC 44-14-04003(3) (when a request is unclear, "the agency should communicate with the requestor to clarify the request") and WAC 44-14-04003(4) (an agency "must" respond to a request within five days by providing the records, estimating a time for providing them, denying access, or seeking clarification of the request.) Just because the City ignored the first two pages of the January 25, 2006 letter does not alter their obvious purpose – to serve as a new request for clearly identified records pursuant to the PRA.

The City argues that RHA did not treat its own multiple letters seeking Crime-Free Rental Housing records as if they each constituted new records requests. Brief of Respondent at p. 30. Even if legally relevant, this is demonstrably untrue. RHA's January 25, 2006 letter demanded a full response "to our PDA *requests*" – in plural form – proving that RHA regarded its July 2005, October 2005 and January 25, 2006 letters as successive and separate requests for the same records. CP 2149 (italics added). If RHA believed that it had made only one request, in July 2005, it would have said "request" in singular form. The letter also referred to "our October 7, 2005, follow-up request" and to "our July 20

and October 7 requests," further demonstrating that RHA treated each letter as a separate, distinct request for the same records. CP 2150.

In sum, RHA restarted the PRA process when it submitted a new, clearly identifiable request in January 2006 for previously requested records. As a result, the statute of limitations did not start to run until the City made a claim of exemption or last production of records in response to that new request. RCW 42.56.550(6). Accordingly, the suit was timely.

2. Federal law supports RHA's argument that the one-year limitation period started over with the January 25, 2006 resubmittal.

The City distinguishes this case from federal Freedom of Information Act (FOIA) cases in which courts recognized that a plaintiff can restart the time-limitation period by resubmitting a records request. Brief of Respondent at pp. 30-33. These arguments are unavailing. Appellant RHA recognizes that FOIA, 5 U.S.C. § 552 et. seq., is different from the PRA. The point is that, under both the federal and state statutes, *nothing prevents a citizen from starting over.* [4] Because RHA made a new

[4] The City makes the strained argument that FOIA cases support dismissal of this case because: 1) FOIA's six-year limitation period starts "from the date the cause of action first accrues;" 2) in the City's view, a PRA cause of action first accrues at the moment that an agency denies a records request; and 3) although FOIA has a different statute of limitations that commences when administrative remedies are exhausted, not when a "claim of exemption" is made, FOIA's rule should apply to PRA cases such that the one-year limitation period begins when an agency denies a request. Brief of Respondent at p. 31. Even if this court could rewrite the PRA in this way, it would not help the City because the moment that an agency denies records is the *same moment* when

request for the Crime-Free Rental Housing Program records on January 25, 2006, the one-year limitation period did not start until the City made a claim of exemption or a last production of records *in response to that January 25, 2006 request.* That happened, at the earliest, on April 14, 2006, when individual withheld records were first identified. Therefore, the January 17, 2007, suit was timely. RCW 42.56.550(6).

C. The Record Disproves the City's Statements that All Records Responsive to the July 20, 2005 Request Were Provided in August 2005, and Were Not Produced On An Installment Basis.

It is critical to set the record straight regarding when the City made the "last production of records on a partial or installment basis," because the one-year limitation period does not begin until the later of two events – the last production, or a claim of exemption. RCW 42.56.550(6). There is no dispute that the City provided records to RHA in installments. Brief of Respondent at p. 34 (referring to "three installments of records" produced in March 2006). The City wrongly claims, however, that those March 2006 installments were not in response to RHA's original July 2005 records request and therefore did not affect the date when the statute of

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an agency is required to provide a particularized explanation of why each record is exempt. RCW 42.56.210(3). Thus, the limitation period still begins when a claim of exemption is made, whether the City's "first accrual" argument is accepted or not.

Furthermore, the City's analogy misfires because, under FOIA, a cause of action accrues only after a plaintiff has exhausted all administrative appeals – a process which requires an agency to explain why it is withholding records. Thus, FOIA – like the PRA – imposes a time limit on filing suit only *after* a detailed claim of exemption is made.

limitations began to run. Brief of Respondent at p. 33. In fact, the City extended the statute of limitations on March 1, 2006, and again on March 8, 2006, by providing dozens of documents responsive to RHA's original request, as explained below.

1. The March 2006 installments included records responsive to RHA's original request.

The City claims that all records provided in March 2006 were actually in response to the second part of RHA's January 25, 2006 letter, which was under the subheading **"New PDA Request for More Recent Documents."** Brief of Resp. at p. 34. That second part of the letter sought certain records that were created by the City after July 20, 2005. CP 2149. It was intended as an update to RHA's original July 20, 2005 request. Specifically, it sought:

> copies of all documents in the City's possession or control *generated or dated from July 20, 2005, to the present* (not including documents already provided to us, or which will be provided pursuant to our October 7, 2005, follow-up request), which relate in any way to:
> a. the actual and/or estimated costs of operating the City of Des Moines' Crime Free Rental Housing Program...;
> b. the actual and/or estimated revenue from...the Ordinance/Program...;
> c. the actual and/or estimated costs of police response to calls relating to rental housing units...; and

> d. documentation regarding landlords who have or have not complied with the Ordinance/Program, and all actions taken to enforce the terms of the Ordinance/Program.

CP 2149-50 (italics added).

The City relies on the Declaration of Vicki Sheckler for the proposition that the March 2006 installments were made solely in response to the *second* part of the January 25, 2006 letter, and that they were not intended to be part of the larger set of records originally requested in July 2005. Brief of Resp. at p. 34. However, the declaration does not support that proposition. Rather, the declaration refers to the January 25, 2006 letter as RHA's "second public records request," and does not differentiate between the first and second parts of the letter. CP 1151-52.

In reality, the March 2006 installments included records that were responsive to *both parts* of the January 25, 2006 letter – the first part seeking Crime-Free Rental Housing Program records generated *before* July 20, 2005; and the second part seeking similar records generated *after* July 20, 2005. CP 1151-52, 1505-1965. Therefore, the March 2006 installments relate to RHA's suit, which alleged unlawful withholding of

Crime-Free Rental Housing Program records generated before July 20, 2005, and the City's claims to the contrary are incorrect.[5]

To assist the court, RHA prepared a list of records dated or generated *before* July 20, 2005, which were included in the City's March 2006 installments. That list is attached as Appendix A. It demonstrates in detail that the City responded to RHA's request for pre-July 20, 2005 records on a "partial or installment basis," extending the statute of limitations with each installment.

Records are provided on a partial or installment basis when a large set of records is released in more than one part, as happened here, where the records originally requested in July 2005 were released in parts on August 17, 2005, March 1, 2006 and March 8, 2006. RCW 42.56.080. Because a PRA suit must be filed within one year of "the last production of records on a partial or installment basis," and because RHA filed suit less than a year after the March 2006 installments, the suit was timely and dismissal should be reversed. RCW 42.56.550(6).

[5] The second part of the January 25, 2006 letter specifically excluded records already provided. CP 2150. Therefore, any duplicates provided in March 2006 were not responsive to the second part of the letter, and could only be responsive to the first part.

2. The February 2007 production was another installment.

The City admits that in February 2007, after RHA filed suit, it provided additional records in an attempt to provide a satisfactory response to RHA's original records request and to settle the suit. Brief of Resp. at p. 34. The City also admits that "the City had previously provided the data from which these reports were generated in response to the second records request." Id. Although these admissions actually support RHA's argument that the February 2007 production constituted yet another part of a larger set of records, the City argues illogically that the opposite is true. Id.

It is irrelevant that the City was not *required* to create new records in February 2007 from raw data that was previously available. The City could have converted its raw data into a new record at any time, and did not have to wait until February 2007 to do so. On its face, RCW 42.56.550(6) is concerned only with the *timing* of a production. It is the "last production of records on a partial or installment basis" that commences a new one-year limitation period, not the "last involuntary production" or the "last production of records that existed in the same form at the time records were requested." RCW 42.56.550(6). The statute reflects the policy that citizens should have all available information

before a limitation period is imposed in order to prevent needless litigation or, if there is still a dispute, to ensure effective judicial review. Accordingly, this court should decline the City's request to rewrite the PRA, and should find that the City effectively waived its statute of limitations defense in February 2007 when it provided additional records admittedly responsive to RHA's original request.

D. Policies Underlying Strict Time Limits are Inapplicable Here.

The City cites the U.S. Supreme Court decision in Badaracco v. Commissioner of Internal Revenue, 464 U.S. 386, 104 S. Ct. 756, 78 L. Ed. 2d 549 (1984), for the proposition that all statutes of limitations must be construed strictly in favor of the government. Brief of Resp. at p. 16. This is grossly out of context. Badaracco dealt with the government's attempt to collect back taxes from a cheating taxpayer. The court said:

> This Court long ago pronounced the standard: 'Statutes of limitation *sought to be applied to bar rights of the Government*, must receive a strict construction in favor of the government.'

Id. at 391 (italics added) (citation omitted). That federal rule has no application here, where the PRA statute of limitations does not "bar rights

of the Government" to prosecute or collect anything. At stake here is the fundamental right of *citizens* to find out what their government is doing.

The U.S. Supreme Court decision in Order of R.R. Tels. v. Ry. Express Agency, Inc., 321 U.S. 342, 64 S. Ct. 582, 88 L. Ed. 788 (1944), offers a more relevant discussion of the policy underlying statutes of limitations. Their purpose, the court said, is "to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." Id., 321 U.S. at 348-49. Here, there is no danger of lost evidence harming the City. PRA cases like this one are decided de novo based entirely on the agency's administrative record. RCW 42.56.550(3); Amren v. City of Kalama, 131 Wn.2d 25, 32, 929 P.2d 389 (1997). Also, the City is responsible for most of the delays in this case – first stating that entire categories of unidentified records fell under either the work-product, attorney-client privilege or deliberative process exemptions; then promising to reconsider that statement but delaying a decision for three months; waiting eight months to provide even minimal descriptions of the withheld records; and asking RHA to delay its suit. Under these circumstances, there is simply no policy reason to shield

the City from judicial review, and nothing to override the PRA's strong policy in favor of public access to records.

E. The City Invents a Legislative History.

Without citing authority, the City asserts that "the one year statute of limitations was adopted to provide municipalities with finality and repose." Brief of Resp. at p. 14. There is no evidence to support this assertion. The Legislature's bill reports and floor reports do not mention any reason for changing the statute of limitations from five years after a PRA violation to one year after the agency's claim of exemption or last production of records. Nor do the reports discuss the specific terms, including "claim of exemption," that are at issue here.

The City further asserts that the Legislature shortened the statute of limitations because it "was concerned about the fiscal impact of daily penalties upon local government." Brief of Resp. at p. 15. But the House Bill Report cited by the City does not say that. It merely indicates that local governments opposed an increase in penalties for PRA violations from $100 to $500 per day, a proposal that was dropped from the bill. Brief of Resp., App. A. In fact, the main thrust of the bill was to strengthen disclosure requirements by preventing agencies from denying "overly broad" requests. Chap. 487, Laws of 2005. In sum, the City

improperly presents speculation as fact. In the absence of any legislative history to guide the interpretation of the PRA statute of limitations, this court must rely on its plain terms, on the PRA requirement to construe the entire statute liberally in favor of disclosure, and on the general rule that statutes must be construed as a whole to give effect to all parts.[6] Using these tools, it is clear that the PRA statute of limitations commences only after an agency has fully explained why it believes records are exempt and provided all records that are not exempt.

F. The City Does Not Answer Compelling Arguments.

1. Liberal construction of the PRA must protect the citizen's right to judicial oversight.

The PRA directs that *all* of its provisions shall be liberally construed to protect the public interest in disclosure. RCW 42.56.030; Progressive Animal Welfare Society v. Univ. of Washington, 114 Wn.2d 677, 682, 790 P.2d 604 (1990) (the mandate for liberal construction includes liberal construction of the PRA's provision for attorney's fees). In its opening brief, RHA argued that the right to seek judicial review in RCW 42.56.550 is among the most important provisions requiring liberal

[6] Koenig v. City of Des Moines, 158 Wn.2d 173, 181, 142 P.3d 162 (2006) ("we begin with the statute's plain language and ordinary meaning"); RCW 42.56.030; Skamania County v. Columbia River Gorge Comm'n, 144 Wn.2d 30, 45, 26 P.3d 241 (2001) (all provisions of an act must be considered in their relation to each other, and, if possible, harmonized to ensure proper construction).

construction. Brief of Appellant at pp. 29-30 (citing Spokane Research & Defense Fund v. City of Spokane, 155 Wn.2d 89, 100, 117 P.3d 1117 (2005), for the proposition that "judicial oversight is essential" to ensuring disclosure). The City did not rebut arguments that the trial court failed to construe RCW 42.56.550(6) liberally to protect judicial oversight. That failure alone is sufficient grounds for reversal.

2. The statute of limitations starts anew with each successive claim of exemption.

Similarly, the City did not rebut RHA's detailed arguments that when an agency makes more than one claim or partial claim of exemption, as the City did here in August 2005, January 2006, April 2006 and June 2006, the statute of limitations starts to run with the last claim rather than the first one. Brief of Appellant at pp. 32-37. For the reasons explained in the opening brief, this argument warrants reversal.

3. The statute of limitations never commenced as to some claims.

The City does not deny that, because it withheld some records without ever claiming that they were exempt, the statute of limitations never commenced for RHA's claims related to those records. See Brief of Appellant at p. 44. Thus, it was error to dismiss the entire suit.

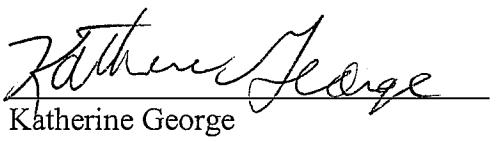
III. CONCLUSION

For the foregoing reasons, the Court should reverse the dismissal and remand the case for trial and an award of penalties and fees.

Dated this 28th day of January, 2008.

Respectfully submitted,

GENDLER & MANN, LLP

By: 

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APPENDIX A

Dates generated	Description	Date given to RHA*
Feb.-June 2005	Expense reports for crime-free landlord training, CP 1505, 1554, 1572, 1576, 1628, 1659	3/1/06
Feb.-June 2005	Memos to police chief re: landlord training, CP 1506, 1573, 1629, 1658	3/1/06
March-June 2005	Memos listing training participants, CP 1507, 1574, 1644, 1660	3/1/06
2/26, 4/2, 4/30 & 6/18/05	Landlord workshop attendance sheets, CP 1508, 1511, 1577-78, 1580, 1623, 1626-27, 1693, 1695-98	3/1/06
2/28/05	Police chief email re: Crime-Free Rental Housing Class, CP 1509	3/1/06
3/22/05	Crime-Free Multi-Housing syllabus, CP 1570-71	3/1/06
3/23, 4/2, 7/19/05	Expense forms for training classes, CP 1555, 1575, 1700	3/1/06
3/23/05	Memos listing trained property managers, CP 1556, 1557	3/1/06
March 2005	Crime-Free Multi-Housing Registration Forms, CP 1558, 1560-63, 1566	3/1/06
3/23/05	Certificate of landlord training completion, CP 1567	3/1/06
3/23/05	Crime Free Multi-Family Housing List, CP 1568-69	3/1/06
5/26/05	Property owner survey, CP 1630	3/1/06
7/8/05	Office supply receipt, CP 1823	3/8/06
7/14/05	Receipt for landlord certificate, CP 1823	3/8/06
6/25/05	T-Mobile bill, CP 1868-69	3/8/06
7/19/05	Expense reports for crime-free conference on July 10-13, 2005, CP 1898, 1921	3/8/06
7/13/05	Gas and food receipts, CP 1899	3/8/06
7/13/05	Subscription to RHA newsletter, CP 1904-05	3/8/06
7/10/05	Hotel and car rental receipts, CP 1922-23	3/8/06
unknown	Summary of police calls by area and housing type from January 1-July 15, 2005, CP 1945-65	3/8/06

*CP 1151-52.